

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAYMENTONE CORPORATION,

Plaintiff,

vs.

PAYPAL, INC.,

Defendant.

Case No.: 11-cv-02186-YGR

**ORDER DENYING PAYMENTONE'S MOTION
TO STRIKE DECLARATION OF ROBERT FLOOD
AND RE-SETTING BRIEFING SCHEDULE AND
CLAIM CONSTRUCTION HEARING**

Plaintiff PaymentOne Corporation has filed a Motion to Strike Declaration of Robert Flood ("Motion") (Dkt. No. 110.) By this Motion, Plaintiff requests that the Declaration of Robert Flood ("Flood Decl.") and all references to the Flood Decl. in Defendant PayPal's Responsive Claim Construction Brief be stricken. The primary ground for Plaintiff's Motion is that Defendant failed to disclose Mr. Flood's expert testimony prior to claim construction briefing, as required by the Local Patent Rules. Defendant counters that the Flood Decl. was necessary to rebut arguments made by Plaintiff for the first time in claim construction briefing. (Dkt. No. 114.) Mr. Flood's opinion is offered by Defendant regarding the meaning of disputed claim terms to a person of ordinary skill in the art. (*Id.*) The Court heard oral argument on the Motion on October 5, 2012.

It is not clear to the Court that the Flood Decl. or the opinions expressed therein are necessary to determine who a person of ordinary skill in the art is for the purposes of claim construction in this action. However, because of the possibility that the information may assist the Court in its claim construction, Plaintiff's Motion is **DENIED**.

If Plaintiff so chooses, claim construction discovery is hereby re-opened to permit the deposition of Mr. Flood by Plaintiff. The deposition shall occur, if at all, between October 16th to


1 18th, 2012 in Chicago, Illinois. Plaintiff may retain its own expert in response to the Flood Decl.
2 If the deposition of that expert is sought by Defendant, Defendant shall submit a Stipulation and
3 Proposed Order seeking to re-open discovery for that limited purpose, identifying the proposed date
4 of deposition. The parties shall meet and confer in advance prior to the filing regarding scheduling.

5 The parties' respective reply claim construction briefs shall be filed by **October 31, 2012**.
6 The claim construction hearing is re-scheduled for **December 5, 2012 at 2:00 p.m.**

7 This Order terminates Dkt. No. 110.

8 **IT IS SO ORDERED.**

9
10 Dated: October 9, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California